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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Policy and Rules Concerning the) CC Docket No. 96-61
Interstate, Interexchange Marketplace)
)
Implementation of Section 254(g) of the)
Communications Act of 1934, as amended)
)
1998 Biennial Regulatory Review --) CC Docket No. 98-183
Review of Customer Premises Equipment)
and Enhanced Services Unbundling Rules)
in the Interexchange, Exchange Access)
and Local Exchange Markets)

To: The Commission

REPLY COMMENTS OF TANDY CORPORATION

Tandy Corporation ("Tandy"), the parent corporation of RadioShack, by its attorneys and pursuant to Section 1.415(c) of the Commission's Rules, 47 C.F.R. § 1.415(c), hereby respectfully submits these Reply Comments in response to the Commission's Further Notice of Proposed Rulemaking in the captioned proceeding ("FNPRM"), FCC 98-258 (rel. Oct. 9, 1998).¹

¹ Federal Register notice of the FNPRM was published on October 23, 1998, 63 Fed. Reg. 56,892.

I. INTRODUCTION

Through nearly 7,000 affiliated RadioShack stores, Tandy Corporation is one of America's premier retailers of high quality customer premises equipment (CPE)² to consumers and small businesses alike. CPE purchases represent a substantial portion of products sold each year by RadioShack to its 65 million customers. Tandy Corporation therefore has a keen interest in this proceeding, the outcome of which could significantly affect CPE retailers.

In the FNPRM, the Commission inquires whether it should amend its rule that prohibits telecommunications carriers from bundling telecommunications services³ with CPE. See 47 C.F.R. §

² CPE "means equipment employed on the premises of a person (other than a carrier) to originate, route, or terminate telecommunications." 47 U.S.C § 153(14).

³ The Communications Act defines "telecommunications service" as "the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used." 47 U.S.C. § 153(46).

64.702(e) (the "antibundling rule").⁴ As demonstrated below, the antibundling rule has greatly benefited American consumers and should not be relaxed for any telecommunications services market that is not subject to robust competition (i.e., a market with numerous competitors, none of which has a majority share). If the antibundling rule is relaxed for a particular market, then the Commission must require carriers within that market to offer a nondiscriminatory service-only option -- the charge for which is free of any equipment subsidies.

II. DISCUSSION

The Commission's antibundling rule is the bedrock of the world's most vibrant CPE market. American consumers, once relegated to the monolithic rotary dial telephone, today can choose from a broad array of high quality equipment with the

⁴ The rule provides:

Except as otherwise ordered by the Commission, after March 1, 1982, the carrier provision of customer-premises equipment used in conjunction with the interstate telecommunications network shall be separate and distinct from provision of common carrier communications services and not offered on a tariffed basis.

47 C.F.R. § 64.702(e).

features and functions they want at the price they are willing to pay. They are able to do so because of the Commission's antibundling rule.⁵ See AOL Comments at 5 ("the fact that consumers have not been required to purchase a package of specific products or services to get the one they want has directly contributed to the rich array of choices that exist today"). The Commission must be extremely careful in changing this rule which has served American consumers so well. The procompetitive policies underlying the rule remain valid today in most telecommunications and cable markets.

A. Carriers May Currently Offer CPE And Service Packages.

Supporters of bundling argue that repeal of the antibundling rule would enable them to offer packages of CPE and service that consumers want. See Bell Atlantic Comments at 12. However, as AOL points out, such "packaging" is already permitted under the rule. See AOL Comments at 9. The rule does not proscribe carrier marketing of packages of CPE and

⁵ While the antibundling rule has been in effect for many years in telephony markets; Congress demonstrated its continuing relevancy in Section 629A of the Telecommunications Act of 1996 which promotes retail provision of unbundled cable set-top boxes and other "navigation devices." See 47 U.S.C. § 549.

transmission services. Carriers can (and do) offer consumers one-stop shopping under the present rule, provided that the charges for service and equipment are separately stated and the equipment is not subsidized from charges for service. The antibundling rule disadvantages no one since it does not deny consumers the benefits of one-stop shopping, nor does it preclude carrier provision of CPE.

Proponents of bundling argue that only by eliminating the rule would carriers be able to offer "attractive" service/equipment packages to consumers. See API Comments at 4. While such subsidized bundles may appear attractive to introduce consumers to a new type of service, the nontransparent costs of bundling ultimately are always borne by consumers in the form of higher service charges. Bundling does not lower the total cost to consumers, since a carrier that discounts CPE to purchasers of a package must still recover the cost of CPE through service charges.

B. Bundling Puts the Carrier Rather Than the Consumer in the Driver's Seat.

Bundling reduces consumer choice. When it adopted the antibundling rule the Commission observed:

In general, bundling of goods and services may restrict the freedom of choice of consumers and restricts their ability to engage in product substitution. Unless the goods and services in the bundle exactly match the preferences of consumers, consumer satisfaction may be reduced by bundling.

Amendment of Section 64.702 of the Commission's Rules and Regulations (Second Computer Inquiry), 77 FCC 2d 384, 442 ¶149 (1980) (emphasis added). The Commission's observations remain true today in many wireline, wireless and cable markets.

The Commission has an affirmative obligation to promote competition in telecommunications markets. See H.R. Rep. No. 104-204, 104th Cong., 1st Sess 112 (1995) (noting "competition in the manufacturing and distribution of consumer devices has always led to innovation, lower prices and higher quality"). If the Commission repeals the antibundling rule, carriers would seek to partner with several CPE vendors (or perhaps only one). When the carrier makes the CPE choice rather than the consumer, fewer CPE manufacturers are able to compete for the consumer's business. Vendors without carrier alliances would exit the market because they would lack the ability to use the carrier's basic service revenue to cross-subsidize their CPE offerings.

Thus, the success or failure of CPE providers would not turn on their ingenuity, customer care, or product quality as it does today, but instead on their ability to "cooperate" with carriers in creating discounted packages.

Tandy urges the Commission to continue to promote and preserve wide-open manufacturing and retail CPE competition to the greatest extent possible.

**C. The Commission Must Require Carriers To Offer
Unbundled Services On A Nondiscriminatory Basis.**

The antibundling rule was adopted, not because there is something inherently wrong in packaging CPE and service, but to prevent carriers from forcing consumers to accept a CPE offering as a condition of obtaining service. AT&T, MCI and others argue that they should have the right to provide transmission service only to customers that agree to obtain carrier-selected CPE. See AT&T Comments at 14; MCI Comments at 36-39. The argument that a separate service requirement is a "pointless regulation" (AT&T Comments at 14) does not withstand scrutiny.

Even if AT&T is right that nothing in the U.S. Government's obligations under the General Agreement on Trade in Services "should require carriers to offer basic services and CPE in an

unbundled option" (AT&T Comments at 12), the Commission should ensure that a service-only option remains available to consumers so that they may select the CPE that best meets their needs at the price they are willing to pay. The Commission's public interest responsibility is to promote, not inhibit, consumer choice. As CEMA notes, a separate service requirement "would benefit consumers by ensuring that those consumers that do not wish to purchase carrier-provided CPE may obtain transmission services only." CEMA Comments at 9.

Requiring carriers to make service available on an unbundled basis gives consumers the ability to determine whether to purchase the bundled service or create their own packages, thus encouraging competition in both the CPE and service markets. Continuing this policy will further advance the Commission's pro-competitive policies in the equipment marketplace. At a bare minimum, the Commission must require carriers to offer unbundled service offerings (free of any equipment subsidies) along with any bundled service offerings which are permitted.

**D. Unbundled Service Must Be Offered On A
Nondiscriminatory Basis.**

Tandy encourages the Commission to go farther than simply requiring unbundled services; it must also require that the unbundled components be offered on nondiscriminatory terms. Section 202(a) of the Communications Act, requires such a nondiscriminatory unbundling provision. "Nondiscrimination" means that a carrier cannot be permitted to offer stand-alone transmission service at the same price at which it offers a service/CPE package, since under such terms the customer that does not take the CPE is paying a higher charge for the same service. This constitutes unjust and unreasonable discrimination in violation of the Communications Act.

If carriers are permitted to bundle CPE with service, then they must also provide service on an unbundled, nondiscriminatory basis.

III. CONCLUSION

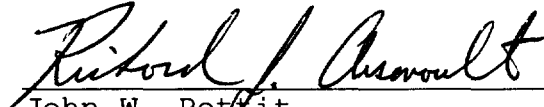
For the reasons stated above, the Commission should weigh carefully any change to its antibundling rule. The rule should not be relaxed for any telecommunications service market unless

Reply Comments of Tandy Corporation
December 23, 1998

it is subject to robust competition. If the rule is relaxed for such a market, then the Commission must require carriers to offer service on an unbundled, nondiscriminatory basis free of any equipment subsidies.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Richard J. Arsenault, hereby certify that on this 23rd day of December 1998, I caused a diskette and hard copy of the attached Reply Comments of Tandy Corporation to be served by hand delivery to the following:

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